

OFFICE OF CHIEF JUSTICE.

(Copy.)

(No. 82. Executive.)

Government House, Halifax, N. S., 4th August, 1860.

MY LORD DUKE,—

It is with extreme regret, that I have to announce to your Lordship, the death of Chief Justice Sir Brenton Halliburton, who, your Lordship is aware, had for many years presided over the Supreme Court of Nova Scotia, with so much credit to himself, and advantage to this Colony. I have also to inform your Lordship, that I have, by the unanimous advice of my Executive Council, provisionally appointed, until Her Majesty's pleasure shall be known, the Honorable William Young to that office.

I append a copy of a remonstrance from Mr. Johnston, against the appointment of Mr. Young, together with that gentleman's reply. But after a careful consideration of the subject, I have not considered it my duty to postpone the appointment, according to Mr. Johnston's request. 28th Ju

The appointment of Mr. Young has caused a vacancy in the Executive Council, to which I have nominated the Honorable T. D. Archibald, a gentleman who has long held a seat in the Legislative Council; and I have also appointed Mr. Colin Campbell to the ninth seat in the Executive Council, which has been vacant since the formation of my present Government.

I have, &c.,

(Signed.)

MULGRAVE.

P. S.—Since writing this despatch a further remonstrance has been forwarded to me by Mr. Johnston, but as it requires an answer from Mr. Young, as it impeaches his character, I shall forward it as soon as he has had time to prepare his justification.

(Signed.)

MULGRAVE.

His Grace the Duke of Newcastle, &c., &c., &c.

Halifax, N. S., 26th July, 1860.

MY LORD,—

From an article in the government organ of yesterday, I perceive that the members of your Excellency's Executive advise the appointment of Mr. Young to the vacant office of Chief Justice.

Acting as the recognized leading member of the Opposition, a large political party, and which I believe at this moment comprises a majority of the people of the Province, I felt it my duty to address His Grace the Duke of Newcastle through your Excellency, for the purpose of shewing that the present provincial administration have, in attaining their position, openly violated the law, and that an appeal to the people was required to vindicate the law and the interests of the country. The charges were definite and distinct, and I have asked the opportunity to substantiate them.

In this investigation, Mr. Young is involved in the serious alternative, of having in a case affecting his own personal and party interests, and regardless of his solemn judicial oath, wilfully perverted judgment, or of being ignorant of the plainest principles of law.

Acting in the interests I do, I feel it a duty imposed upon me to request, if it be under your Excellency's consideration to appoint Mr. Young to the office of Chief Justice that the decision of that question may be deferred until the charge against Mr. Young shall be investigated and disposed of, by His Grace the Duke of Newcastle.

Should your Excellency, however, see fit previously to appoint Mr. Young, I beg to request that your Excellency will cause a copy of this letter to be sent to Her Majesty's Government, accompanying the announcement of his appointment by your Excellency.

(Signed.)

J. W. JOHNSTON.

His Excellency the Earl of Mulgrave, &c., &c., &c.

Halifax, 28th July, 1860.

To His Grace the Right Honorable, the Duke of Newcastle, &c, &c., &c.

I had the honor, on behalf of a political party in this Colony, comprising I feel assured, much more than half its electors, to address your Grace, under date of the 13th of June last, on the necessity of referring to the people, by means of the dissolution of the Assembly, questions which concern most deeply the moral, still more than the political interests of this Colony.

My letter did not reach England until the eve of your Grace's departure, in consequence of His Excellency the Lieutenant Governor, having delayed its transmission for a fortnight. As for this cause it may not have come to your Grace's hand while in England, I have the honor to submit another copy herewith.

It having been made known, that the Executive advised the appointment of Mr. Young to the vacant office of Chief Justice, I considered it my duty in view of the interests I represent, to address to His Excellency the Lieutenant Governor a letter of which I also have the honor to enclose a copy.

A charge so specific and so serious against Mr. Young, as the wilful perversion of judgment for personal and party objects; is before the Provincial Government, and is now before your Grace.

It is most painful to me to assume this attitude, which I cannot avoid, without shrinking from a duty that my relation to the public affairs of this Province forces upon me; and I am assured your Grace will believe, that such a charge can neither be slighted nor evaded, without lasting wrong to the country, in its most important interests.

If it shall meet your Grace's convenience, my friends and myself will be prepared at any moment, to substantiate the charges I have advanced; but as expressed in my letter to your Grace, it is not my desire to occasion embarrass-

28th July, 1860.

ment, by urging your Grace's investigation while here, of the subject, if inconsistent with your convenience, or incompatible with the objects of your Grace's presence in the Colony; and I have to solicit, that your Grace will honor me with the communication of your intentions and desire in this respect.

I have, &c.,

(Signed.)

J. W. JOHNSTON.

(No. 83. Miscellaneous.)

Government House, Halifax, N. S., 17th August, 1860.

MY LORD DUKE,—

In reference to the despatch addressed to your Lordship by His Excellency the Lieutenant Governor, No. 82 of the 4th August, relating to the appointment of the Hon. William Young as Chief Justice of Nova Scotia, and the remonstrance of the Hon. J. W. Johnston against that appointment, I have the honor to forward a further remonstrance from that gentleman, with the documents noted in the margin, and also a letter in reply thereto, addressed to your Grace by the Hon. W. Young.

(Signed.)

I have, &c.,

C. TROLLOPE.

His Grace the Duke of Newcastle, &c., &c., &c.

Halifax, 6th August, 1860.

TO THE RIGHT HONORABLE HER MAJESTY'S PRINCIPAL SECRETARY OF STATE FOR THE COLONIES, HIS GRACE THE DUKE OF NEWCASTLE, &c., LONDON.

Your Grace having informed me that the official consideration of the subjects brought to your notice, in my letters of 13th June and 28th July last, was incompatible with your present visit to the North American Colonies, it will, on a future occasion, be my duty, availing myself of Your Grace's permission at our late interview, to bring more distinctly to your notice, the questions having relation to the subjects of the former of these letters, with the documents substantiating my statements.

At present I address Your Grace on the important consideration presented to you in my letter of 28th July—the appointment of Mr. Young to the office of Chief Justice, that the remonstrance I make, on behalf of a large proportion of the people of this Province against its confirmation, may accompany the announcement of the appointment at Downing Street, that they may together receive the consideration of Her Majesty's Government.

I transmit herewith the copy of a letter, which, on the 25th July, I sent to his Excellency the Lieutenant Governor, and of which I also furnished Your Grace with a copy.

In the face of the charge contained in that letter, the most serious that can be made against a Judge, the elevation of Mr. Young to the office of Chief Justice, was announced in a Special Gazette, on last Saturday afternoon. The next appeal against so great a wrong, as the appointment to the highest judicial position in the country, of a person lying under an imputation so serious, is to Her Majesty's Secretary of State for the Colonies. To attain and secure the position which has enabled Mr. Young and his colleagues to dispose of this high judicial office, and dispense the patronage of the Crown, required successive infractions of the law, throughout the last session of the Assembly, accom-

plished by means of a majority, made up through the addition of those whose presence there was itself an open defiance of the Statute law of the land.

These acts have been officially presented for Your Grace's consideration, in my letter of the 13th June. I confine myself now to the conduct of Mr. Young on the Election Committees, in the cases of Messrs. Cochran and L. Smith, as evincing on his part a wilful perversion of judgment, and violation of judicial integrity, under circumstances of an aggravated nature, which disqualify him for the high trust to which his Excellency, by the advice of his Council, Mr. Young's colleagues and political associates throughout the transactions of the last session, has appointed him.

I transmit herewith copies at large of the proceedings and evidence, in those cases; and in that of Mr. McLellan's, similar to Mr. Smith's in its general nature, also full extracts of the Provincial Acts bearing on the questions raised, and of Sir Richard Bethel's and Sir Henry Keating's opinion on the ineligibility of Coroners and Way Office Keepers, and other officers, to be elected to serve in the Assembly, unless their resignation were made before nomination.

That the offices of Coroner and Way Office Keeper, are offices of emolument under the Provincial Government, and that Messrs. Cochran and Smith were legally proved to have held those offices within the meaning and subject to the operation of the Provincial Act, and were ineligible to have been elected, or sit in Parliament, are propositions that rest on principles of law, too plain to require comment.

The testimony afforded of both officers having acted in their offices, was complete, and no evidence being offered in contradiction, or explanation, it was conclusive that they duly held them.

The evasion under which this familiar rule of every day's occurrence has been affected to be escaped from, in Mr. Cochran's case, but makes more apparent its wilful perversion of judgment; and is aggravated, as regards the spirit under which the committee was guided, by the facts that notice to produce the commission was given without effect; and although Mr. Cochran, served with a Subpoena to give evidence, signed by Mr. Young as Chairman, refused to appear, yet the committee would not apply to the House, as authorized by the Act of Assembly, to compel his attendance. That the finding of the committees is, as between the parties, final, is unquestioned; or, to borrow an expression that has high authority, is unappealable as to the seat. The present consideration is of a different nature, and the final character of the report but renders more reprehensible a false judgment.

If Mr. Young, in his conduct on these two committees, violated principles of law and practice, so plain as to preclude the idea of his ignorance of them, no security exists for his judicial integrity on the bench, and suspicion and distrust must ever attend his decisions. No case can ever come before him under higher sanctions.

When Lord Mulgrave refused to dissolve the Assembly, he gave this security for the course he pursued:—

"But I do not consider the House, in resolving to leave the decision of the question of ineligibility in the hands of its committees, appointed according to law, when the evidence can be taken on oath, and when the members of committees are sworn 'well and truly to try the matter of the petition referred to them, and a true judgment to give according to the evidence,' have acted in an illegal or unconstitutional manner; and I have every confidence that the members of the committees, acting under the solemn obligation of an oath, will give their decisions according to law and evidence."

Besides this appeal from the head of the Government, Mr. Young's own personal and political interests were concerned, the interests of parties and of the people were involved, and the country was anxiously waiting the decision.

To turn aside judgment in such a case, was not only to violate the highest judicial obligation, but defiantly to contemn public opinion, and to disregard those restraints which operate when higher principles fail.

Hitherto the Bench of the Supreme Court has been incorrupt and unsuspected, most deservedly commanding universal confidence in its integrity. That such should continue to be its character is peculiarly essential in a community, where party spirit is as universal and as acrimonious as in Nova Scotia; and that its character should not be deteriorated is the object of this letter.

The course I have adopted, and the sentiments expressed in addressing to Your Grace the letters of 13th June and 28th July, and in addressing to you this letter, has met the approval of the gentlemen, in and out of the Legislature, in opposition to the Government, who, being in Halifax on the occasion of His Royal Highness's visit, I have had the opportunity to consult.

The charge is specific, and the proofs accompany it. It remains for Your Grace to determine a question of vital importance to the administration of justice in this Colony, and the essential well being of the country.

The people, in the exercise of their own common sense, understand that Messrs. Cochran, Smith and McLellan held offices of emolument under the Provincial Government, at the time of their election, and were, therefore, under the Act of the Province, ineligible to be elected; knowing this, they perceive that Mr. Young, in the two former cases, under personal and party influence, has, in disregard of his oath and judicial responsibility, perverted the course of justice, and given a false judgment, and no power exists that can impart the confidence essential for a Judge's usefulness, or dispel the belief that what has once been done will not be repeated.

Technical evasions, in excuse of Mr. Young's decisions in the committees, have no such power; they can neither impart that confidence, nor dispel that belief, in the minds of plain but sensible and intelligent men; and lawyers know that, under the law and evidence in these cases, there is no foundation for technical evasion, as Your Grace has the ready means of ascertaining, through the law officers of the Crown.

In a case so vitally important, let not Your Grace be misled by the suggestion that disappointed ambition, or defeated party hopes, lead to unreasonable complaints, or ungenerous opposition. It is not so. Had the Government attained power without flagrant infractions of law, their success would have been recognized and submitted to without a murmur; and had Mr. Young not, unhappily for himself and the country, yielded to inducements, openly to violate judicial integrity, and set an example which, if sanctioned by his elevation to the highest seat of justice, must be most baneful, this remonstrance at least could not have troubled Your Grace, however unfavorable, independently of this occasion, the opinion entertained of his qualities to impart dignity, confidence and respect to the high office, and however strong the conviction that the appointment of Mr. Justice Bliss, rather than of him, would be a public and incalculable blessing to Nova Scotia.

I have the honor to be,

Your Grace's most obdt Servant,

J. W. JOHNSTON.

The papers which accompany this letter are—

1. Copy of the Journal of the proceedings of the Committee on Mr. Cochran's case, and of the evidence, as kept by the Clerk of the House.

2. The same in Mr. Smith's case.

3. The same in Mr. McLellan's case.

4. A brief abstract of these three cases.

5. Copies from Provincial Laws :—

1. For securing the independence of the Legislature by rendering office-holders ineligible for the Legislature (at large.)

2. Concerning Coroners, (sections 1, 2, 4.)

3. For regulating the Post Office Department, sections 1, 2, 8, 25, 36, 46.)

4. For making the parties in all legal proceedings amenable to be called as witnesses, (section 14.)

5. For declaring authority of Election Committees over Witnesses (sec 18). Also, the opinion of Sir Richard Bethel and Sir Henry Keating on the operation over Coroners, Way Office Keepers, and others, of the Act rendering office-holders ineligible for Parliament.

Also, the printed documents from which this opinion is extracted.

Halifax, N. S., 16th August, 1860.

MY LORD DUKE,—

His Excellency the Lieutenant Governor, having communicated to me a copy of Mr. Johnston's letter of the 6th inst, in which so virulent an attack is made upon my character as a lawyer and as a man, I feel called upon, by my position as Chief Justice, to vindicate more at large, than I have previously done, my conduct in the transactions on which he has so harshly commented.

This letter, dated three days after my appointment, is only a repetition, somewhat more violent in its tone, of the charges in Mr. Johnston's previous letter of 13th June, which were effectually disposed of, as I conceive, in the Minute of Council, of June 26th, and in Lord Mulgrave's very able despatch of same date; and perhaps I ought not to complain of the excesses into which Mr. Johnston's unfortunate temper has led him against myself, when I reflect that he has attacked with equal bitterness, every man of the present government, and has not spared even the Lieutenant Governor. But while

I feel that it would indicate a want of spirit, to repress my indignation at so unprovoked and so ungenerous an attack. I will not forget the position I now occupy, nor lose sight of the moderation and calmness, which ought to belong to the judicial character.

Let me invite your Grace's attention, then, to the relations that have long subsisted between Mr. Johnston and myself, and which will throw some light on the singular attitude he has now assumed. For upwards of twenty years, we have taken a prominent part in the politics of the Province, on opposite sides. For upwards of thirty years we have been constantly opposed to each other at the Bar; and for the last ten years at least, we have been open and avowed rivals, with our respective parties sustaining us, for the office of Chief Justice of the Province, whenever it should become vacant. Had the late venerable and lamented Chief Justice, whose place it will be difficult indeed to fill, died while Mr. Johnston was in power, it was perfectly understood that he was to succeed to the office; and had it so happened, I hope I would have submitted with more equanimity, and a better grace, than Mr. Johnston is now displaying:—at all events I would not have pretended that my desire or object, was the appointment of Mr. Justice Bliss, of whose attainments and character I desire to speak with all possible respect, but who would never have been thought of by Mr. Johnston or his party, had the government been theirs.

Having entered the Assembly for the second time in the year 1836, and acted as a delegate to the Earl of Durham in 1838, and to the Home Government in 1839, I was appointed a member of the Executive Council in 1842, and in 1843 was elected Speaker. This high office I continued to fill, by the choice of four successive Houses, till the year 1854, when Mr. Howe, having taken the management of the Railway, I quitted the chair to become leader of the government. In 1857, the government having been overthrown, I became leader of the opposition; and in 1860, on the change of government, I became again its leader. And now by the unanimous recommendation of my colleagues, as appears by the annexed paper which was handed to his Excellency, I have been appointed Chief Justice, subject of course to the Royal pleasure. And having been so appointed, having resigned my place in the government as President of the Council, and my seat in the Assembly, as member for the County of Cumberland, Mr. Johnston asks Her Majesty's Government to humiliate me in the face of British America, where I am tolerably well known, and to convulse the Province, where, I need not say, I have a vast body of political and personal friends, by disallowing my appointment.

For so extraordinary a stretch of the prerogative, repudiating the act of the local government, and leading of course to a dissolution of the Assembly, there ought certainly to be the gravest and most unanswerable reasons; for it is to be remarked, that if I am not fit to be Chief Justice, I am not fit to be a Puisne Judge, which office I might have filled years ago, had I chosen to accept it; while according to Mr. Johnston, the two lawyers next to myself in seniority and position, on the government side, are disqualified by offences still more heinous than mine.

Mr. Johnston questions my capacity, to fill with dignity and power, the high office to which I have been elevated. While I would be understood as speaking with all becoming reserve, of my own qualifications, yet I have been called upon to fill that office by the unanimous choice of my own party, constituting a majority of nine, out of fifty-five members of the Assembly, and with, as I firmly believe, the acquiescence of a large majority of the people, including not a few of Mr. Johnston's political supporters; and it will, I assure your Grace, be no fault of mine, if their reasonable expectations be not fulfilled.

I find no fault with the conservative members of the Bar, who naturally prefer Judge Bliss to me, and have signed the memorial in his favor. As I have already said, most of these gentlemen would have preferred their political leader, to either Judge Bliss or myself; and they have abstained in their memorial, from saying one syllable derogatory to me, either as a lawyer, or as a private individual. With the ablest and most reputable among them, (for they are a strange mixture) I have for many years, been on terms of the most friendly relation, and I am persuaded that nothing could have induced them to concur in any representation offensive to my feelings; while it is notorious, that many of the Conservatives, and all the Liberals at the Bar, with one or two very dubious exceptions, refused to put their names to these memorials. I have a right, then, to assume, that two thirds of the Bar approve of my nomination, even in preference to Judge Bliss; and that his own party lend to Mr. Johnston in this matter, a very slender support. It is not impossible, too, that an English Statesman may enquire, by what rule of the constitution, the Bar are entitled thus to interfere with the prerogative of the Crown.

But if neither Mr. Johnston nor his friends, pretend that my professional standing or private character incapacitate me, one would feel no little curiosity to learn, what other sufficient ground could be discovered, by the most malignant, or the most perverted ingenuity, had not Mr. Johnston frankly avowed, that his only tangible objection to my appointment, was the course I pursued on two of the election committees of last session as a member of Parliament. One would suppose, that the very statement of this proposition was enough; and as no such enquiry was ever heard of before, as it seems to me plainly to involve a breach of privilege, as no tribunal is empowered by law, and no

person out of the House is authorised to question what the House itself cannot question, there is probably no other statesman in British America, who would have conjured up such an objection, or pressed such an inquiry upon the advisers of the Crown. Mr. Johnston politely suggests, that your Grace should take the opinion of the Law Officers of England—that is, the Attorney and Solicitor General, are gravely to inquire whether a committee of the Assembly of Nova-Scotia, balloted for and sworn, and whose decision by the law of the land is final, have pronounced a legal or illegal, a true or false judgment. If this can be done with a Nova-Scotia decision, the rule will extend to the House of Commons, where the sentences of election committees have not always been approved of, and the Law Officers of the Crown would have abundance of work carved out, for many years to come.

But it is impossible that Mr. Johnston can himself believe, that any such course would be taken by Her Majesty's Government, or any such appeal addressed to the Law Officers of England,—and his present letter, now that the appointment is made, is obviously written for other and ulterior purposes, which it is alike my duty and my interest to forestall.

Although I cannot hope, then, to interest your Grace in an inquiry with which you will probably conceive, you have little to do, it is essential that I should embrace this opportunity of defending myself, and placing the question on its true foundation.

At the revision of the Provincial Statutes in 1851, the Judges and Officers of the Revenue, the Post Master General at Halifax, and persons employed by the department there, were disqualified by law from sitting in the Legislative Council, or House of Assembly, and no other disqualification existed under the law of this Province.

In the session of 1858, a Bill was introduced by a supporter of the then Government, into the Legislative Council, disqualifying Judges of Probate and Prothonotaries, after the dissolution of the then House of Assembly, which passed in the Council, and having been sent down to the Assembly, was carried there on the 26th April, by a pure party vote. The effect of the Bill was to drive out of the legislature, or out of office as Judges of Probate, certain prominent members of the then Opposition, including the present Attorney General and Speaker of the Assembly. It was thought therefore that the rule so applied should extend to other offices held by adherents of the government; and on the same 26th of April, the Bill was introduced, and was passed into a law a few days after, which has led to all this confusion, and a copy of which is annexed to Mr. Johnston's letter. Now, it may at once be conceded, and indeed all parties are agreed, that this was a hasty and ill-advised measure, the extent and scope of which was not foreseen, or considered as it ought to have been. By its letter, no person holding any office of profit or emolument under the Provincial Government, after the dissolution of the then House of Assembly, was eligible to sit either in the Assembly or the Legislative Council. The Legislature never intended, nor, as I believe, did a single member of either branch foresee, that the terms of this Act, strictly construed, disqualified the holders of a multitude of petty offices, which by no possibility could affect their independence, and therefore went far beyond what the framers of the act ever contemplated. It was discovered, just in time before the General Election of 1859, that the office of a Notary Public was held under the Provincial Government, and being an office of profit, might disqualify every lawyer in both Houses; and as a measure of precaution, the office, which in this country is a necessary adjunct to a professional income, was resigned. There are a number of Coroners scattered all over the Province, whose emoluments in many cases do not amount to twenty shillings a year—a number of Commissioners for taking bail, whose emoluments are still less—a number of Health Officers, having a legal right to some trifling fees, but in the majority of cases receiving none—a number of Commissioners of Sewers, whose emoluments are seven shillings and six pence per day, paid by the people who select and employ them—upwards of 300 Way Office Keepers, many of whom consent to act merely for the convenience of the public, and whose emoluments in a majority of cases do not exceed three or four pounds a year—and a number of other offices—the whole amounting probably to seven or eight hundred persons. To suppose that the Legislature intended to disqualify this multitude of men, comprehending so large a share of the intelligence of the country, and almost every man of their own body, involves a pure absurdity. A construction so severe, and pregnant with such mischief, had never been suggested to the mass of the people; and, accordingly, several of the members returned to the Assembly at the General Election of 1859, on both sides of politics, were found to be holders of one or other of these petty offices; and as the majority was on the side of the then Opposition (the Government having warned their friends in time to procure most of their resignations) it was determined to raise a question upon their eligibility. The House was in the first instance, moved to examine into and decide this question; but having declined to do so, several petitions were presented, and I referred to committees balloted for and sworn, according to law.

Now, the first point that naturally presented itself to the members of these committees, was, the applicability of the law to the petty offices, which the members petitioned against, were alleged to have held. On the one hand, there was the letter of the law, comprehending every office of profit or emolument, however insignificant, that was held under the Provincial Government. On the other, there was the spirit and intent of the

Act, at variance with its letter. This was a case in which lawyers and judges might well have differed. The man whose maxim was *Ita lex est*, would adhere to the letter; while another man, equally conscientious, but of a more enlarged and liberal turn of thought, would disregard the letter, as courts have often done, and look to the object and intent of the Legislature. On this, however, all would agree, that to bring the law into operation, the strictest, fullest, and most unanswerable evidence was indispensable.

The first committee that reported, drawn from both sides of the House, adopted the more liberal rule. Mr. Peter Smyth, a supporter of the late Government, held an office of profit under a Provincial Commission, from which he had derived, and might possibly hereafter derive, emolument, and which he had not resigned; but the committee, by a unanimous vote, retained him in his seat. They decided in the spirit, but against the letter, of the law, affording an example which other committees thought themselves well justified in following.

In like manner the seats of Doctor Webster, attacked as a Health Officer, and of Mr. Chipman, attacked as a Commissioner of Sewers, were confirmed by Committees, and on these three committees the then political friends of Mr. Johnston had the majority.

Why are these significant facts suppressed in Mr. Johnston's letter? The committees, in the three cases he has singled out, did no more than the committees drawn from his own side, in the three I have cited. The vituperation, then, he has so freely lavished, recoils upon his own party; and surely it would have been more generous and manly to have stated the whole facts, than to have addressed a letter to the Colonial Secretary, containing a one-sided and distorted view.

But whatever may have been the leaning of other members of the committees, with whom I was associated, my decision in the two cases of Mr. A. M. Cochran and Mr. Lewis Smith, did not proceed so much upon the construction of the statute, as upon defect of proof; and upon this head I must invite the attention of Your Grace to a very obvious and sound distinction, which Mr. Johnston has altogether overlooked.

Had actions been brought against Mr. Cochran as a Coroner, or against Mr. Smith as a Way Office Keeper, or had they made themselves criminally liable as such, their acting in those capacities, would have been held in a court of law sufficient to charge them, without proof of appointment. In such cases, only their own interests and positions were concerned; but when their seats in the Assembly were attacked, when, in the case of Mr. Smith, the candidate having the minority of votes claimed to be the sitting member, the interests and rights of the constituencies came into play; and before they were jeopardized or injured, a stricter rule of evidence, by the very principles of the constitution, rose up to protect them. I was of opinion, therefore (and I think that no impartial and clear-headed lawyer will differ with me), that to unseat either Mr. Cochran or Mr. Smith, there must be clear proof that they had been legally appointed to their respective offices, and held them under all the requisitions and sanctions of the law.

Now, there was no such proof in either case.

In Mr. Cochran's, it was not shewn that he had ever received or held a commission as Coroner. Notice to produce a commission had been given, but it was not produced, and secondary evidence could not be found. But there was a still more striking and fatal objection. Our Revised Statutes require that a Coroner "shall be sworn into office before a Judge of the Supreme Court, or the Custos of the County." Had Mr. Cochran been so sworn, the range of inquiry was extremely limited, and the fact could have been easily proved; but it was not proved. We may assume, therefore, that it did not exist; and as the English, equally with our Provincial rule, declares that a Coroner, until he is sworn, is not "in full possession of his office," on what principle of law or justice, in the absence of such proof, could Mr. Cochran have been unseated? This view was taken by five out of the committee of seven, and I concurred with the majority, which is the principal gravamen of Mr. Johnston's letter.

He complains that the committee did not apply to the House to compel Mr. Cochran to be examined against himself, but it is a sufficient answer that this is in the discretion of the committee; and for reasons which it would be a waste of time to go into, I concurred with a majority of six to one, that it was inexpedient, under the circumstances, to refer that question to the House.

In the case of Mr. Smith, the law requires that, while "the Postmaster General, with the approbation of the Governor in Council, may establish Way Offices," the Governor in Council shall "appoint, suspend, or remove the Postmaster General, and all or any Postmasters, Officers, Deputies, Agents, and Servants connected therewith," words sufficiently ample, surely, to include Way Office Keepers. Now, it appeared that by a practice, which the law does not sanction, Way Office Keepers were appointed by commission, under the seal of the Postmaster General, and not of the Governor; and if Mr. Smith held a commission, which was not in proof, it was in this form. It further appeared that Mr. Smith was appointed upon the verbal recommendation of the member for the County, without the previous sanction, as the law requires, of the Governor in Council; and upon both grounds the majority of the committee decided that the proof was defective, and that Mr. Smith should retain his seat. I entirely concurred with that majority, which is the second gravamen of Mr. Johnston's letter.

Now, it is remarkable, that neither in the letter I am answering, nor in the former letter of 13th June, does Mr. Johnston notice these failures in proof, on which both cases mainly turned; while in his statement of 1859, which drew forth the opinions of Sir Richard Bethel and Sir Henry S. Keating, he not only omitted to give an entire copy of the Election law, but withheld the circumstances which give a character and meaning to the act of 1858, and the just and rational views of that act, which I have endeavored to convey in this letter.

In conclusion, I may be permitted to pause for a moment on the clause in this letter, in which Mr. Johnston thinks it necessary to disclaim the workings "of disappointed ambition, or defeated party hopes." Why, then, it may be asked, was it written? I am willing to believe that in this, as in other instances, Mr. Johnston has practised a delusion on himself, and is not aware of the concentrated bitterness with which he has assailed a rival, whose forbearance on many occasions deserved better treatment at his hands.

I have the honor to be,

Your Grace's most faithful and obd't Servant,

WILLIAM YOUNG.

HIS GRACE THE DUKE OF NEWCASTLE, HER MAJESTY'S Colonial Secretary.

MEMORANDUM.

The Executive Council, in view of the vacancy made by the death of the late venerable Chief Justice, advise the Lieutenant Governor to appoint to that office the Honorable William Young, and to make the appointment without delay, for these among other things: Because Mr. Young's family have strong claims upon the people of this Province. His father, as early as 1819, at a time when the agriculture of the country was in a very low condition, by the publication of the letters of Agricola, and by the organization under the patronage of Lord Dalhousie, of Agricultural Societies throughout the Province, gave a stimulus to the productive powers of farmers, which has ever since been discernible in the progress of the industrial habits of our husbandmen.

Because Mr. Young himself, during twenty-four years' service in the legislature, has taken an active part in the preparation and passage of the great public measures, by which that period has been distinguished, and has fairly earned the high distinction which the Lieutenant Governor is respectfully advised to confer. Mr. Young has within that period held the offices of Member of the Executive Council, Speaker of the House of Assembly, Attorney General, and President of the Executive Council—has represented the Province on several occasions as a delegate—has maintained during the last thirty years at the Bar, a practice and position second to no other Lawyer, whether in or out of public life; and because at the present moment, he enjoys the distinguished position of having been elected by the metropolitan Bar, President of the "Barristers' Society," under a recently passed Act of Incorporation.

The Council advise that the appointment should be made without delay, because they are anxious that His Royal Highness the Prince of Wales should be met by a full Bench, and because they are most reluctant, that the Colonial Secretary should be importuned to interfere in a matter, which the Council believe to have been long since remitted by formal despatch, to the sole consideration of the Lieutenant Governor and of his advisers.

Halifax, 23rd July, 1860.

(Nova Scotia. No. 56.)

Downing Street, 13th Dec., 1860.

MY LORD,—

I have had before me your despatch, No. 82, of the 4th of August, 1860, reporting the death of Chief Justice Sir Brenton Haliburton, and the provisional appointment of the Hon. William Young to that office, and at the same time transmitting a remonstrance from Mr. Johnston against the appointment of Mr. Young, together with that gentleman's reply.

I have also received a subsequent despatch from Major General Trollope, forwarding a further remonstrance from Mr. Johnston on this subject.

After a careful perusal of the letters of Mr. Johnston, and the documents which accompanied them, I see no reason for declining to recommend the Crown to confirm the appointment of Mr. Young.

I have accordingly submitted the name of Mr. Young to the Queen, and I will transmit to you in a separate despatch, a Warrant under the Royal Sign Manual, for conferring upon him the office of Chief Justice.

On receiving from you the exemplifications of the appointments which you have made of the Honble. T. D. Archibald and Mr. Colin Campbell to seats in the Executive Council, I shall be prepared to submit their names to Her Majesty.

I have &c.,

NEWCASTLE,

The Right Honble. the Earl of Mulgrave, &c., &c., &c.

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